IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4232 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

R A PATEL

Appearance:

MR Hardik Ravl for Petitioner

MR DJ Bhatt for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/09/1999

ORAL JUDGEMENT

Learned advocate Mr. Raval has appeared for the petitioner. Learned advocate Mr. D.J.Bhatt has appeared for the respondent workman. In this case, the respondent was working as a conductor having 15 years' service with the petitioner Corporation. While working as such, the respondent was on work on route from Jam Raval to Ahmedabad. The bus of the respondent was checked by the

checking party on 26th February, 1984 and the allegations were made that some irregularities of reissuing the tickets to the passengers were found by the checking party. ON the basis of the said report, charge sheet was served upon the respondent and, thereafter, departmental inquiry was initiated against the respondent. After completion of the departmental inquiry, the respondent workman was dismissed from service on 1st July, 1984. Said order of dismissal from service was challenged by the respondent by filing departmental appeal which was rejected by the appellate authority. Thereafter, the respondent challenged the order of dismissal before the labour Court, Ahmedabad in Reference No. 213 of 1985. Before the Labour Court, the respondent workman had not challenged the legality, validity and propriety of the departmental inquiry and the explanation was given by the respondent before the labour Court that the said incident occurred due to negligence but the main charge was that of reissuing the tickets to the passengers. Before the labour Court, no oral evidence was led by either of the parties and the purshis was filed by the respondent workman vide Exh. 20 admitting the legality and validity of the departmental inquiry and has closed the evidence. The Corporation has also closed its oral evidence vide Exh. 21. The Corporation has produced the documents relating to the departmental inquiry and past record. After considering the record, the labour Court has come to the conclusion that the misconduct alleged against the respondent workman is proved and the finding of the inquiry officer recorded against the respondent are not perverse and the same are reasonable. The labour Court has examined the only question relating to the quantum of punishment. While exercising the powers under section 11A of the Industrial Disputes Act, 1947 ("the ID Act" for short), the labour Court has considered the past defaults committed by the respondent and came to the conclusion that the punishment of dismissal from service imposed by the Corporation upon the respondent workman is harsh and disproportionate to the misconduct. The labour Court has further come to the conclusion that the order of dismissal from service would be the permanent economic death of the workman and one opportunity of improving himself is required to be given by withholding the back wages for the period from 17th July,1984 to 5th October, 1987. The labour Court has considered that it is sufficient punishment in respect of the misconduct which has been committed and found to be proved by the labour Court. The labour Court, therefore, granted reinstatement with continuity of service to his original post but without back wages.

At the time of admission of the petition, rule has been issued and notice as to interim relief has also been issued. Subsequently, this Court refused to grant interim relief on 25th January, 1991. Thereafter, the respondent workman has been reinstated by the Corporation. Mr. Raval, the learned advocate appearing for the Corporation has contended that mere denial of total back wages for the intervening period is not sufficient punishment but some more punishment is required to be imposed in light of the misconduct of reissuing the ticket to the passengers because in past, same defaults have been committed by the respondent workman.

On the other hand, Mr. Bhatt, the learned advocate appearing for the respondent workman has pointed out that being the old case and the reinstatement having been implemented long ago and the interim relief having been refused by this Court on 25th January, 1991, now, interference of this Court is not required. Otherwise, it will adversely affect the present situation of the respondent workman. I have considered the submissions made by the learned advocates for the respective parties. According to my view, before the Labour Court, the respondent workman was not examined and he has not deposed before the labour Court in respect of the unemployment for the intervening period. But merely the purshis Exh. 20 has been filed admitting the legality and validity of the departmental inquiry with an explanation that the incident has occurred due to negligence on his part. The labour Court has not properly considered the object of section 11A of the ID Act. Once the respondent workman has not deposed before the labour Court that he remained unemployed during the intervening period, then, without there being any proof about the unemployment of the respondent during the intervening period, denial of the back wages strictly cannot be considered to be a punishment. It amounts to in either way forgoing the claim of back wages at its own by the respondent workman. During the course of submissions made by the advocates for the respective parties, it has been submitted by the learned advocate for the petitioner Corporation that some punishment is required to be imposed upon the respondent in view of the seriousness of the charge of reissuing the tickets to the passengers which has been believed by the labour Court by coming to the conclusion that the findings given by the Inquiry Officer are not perverse but are reasonable. In the year 1985, the respondent had completed more than 15 years of service and having some past record. So, mere denial of total back wages of intervening period,

according to me, cannot be considered to be sufficient punishment while exercising the powers under section 11A of the ID Act. The labour Court ought to have considered the case of the respondent for imposing some punishment for committing misconduct of reissuing the tickets to the passengers. Now, the labour Court passed the award on 5th October,1987. More than 12 years have gone and the respondent has been reinstated in service. Therefore, according to my view, in view of the seriousness of the charge of reissuing of tickets which the respondent has faced during the course of departmental inquiry and believed even by the labour Court, it would be just and proper to impose punishment of stoppage of two yearly increments with cumulative effect. Therefore, considering the entire record, submissions and some suggestions from both the sides, according to me, some punishment is required to be imposed for the misconduct committed by the respondent workman. Hence the following order is passed :

Petition is partly allowed. Two yearly increments of the respondent workman are ordered to be stopped with cumulative effect from 1st January, 1999 onwards. This punishment shall not have the retrospective effect in respect of the reduction of salary and recovery of any amount by the Corporation. Thus, the award passed by the

labour Court in Reference No. 213 of 1985 on 5th October, 1987 is modified accordingly in so far as the imposition of punishment of stoppage of two yearly increments with cumulative effect is concerned. Rest of the award of the labour Court is confirmed. Rule is made absolute accordingly with no order as to costs.

23.9.1999. (H.K.Rathod,J.)

Vyas